IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re patent application of:	Shewchuk *et al.*
Application No.:	10/543,046
Confirmation No.	7149
Filed:	July 21, 2005
Art Unit:	1656
Examiner:	David J. Steadman
For:	ERBB4 CO-CRYSTAL
Customer No.:	23347

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
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RESPONSE TO SUPPLEMENTAL RESTRICTION REQUIREMENT

Sir:

This paper is submitted in response to the Office Action mailed March 13, 2008. Early examination of the application on the merits is earnestly solicited.

In the Office Action mailed May 7, 2007, the Examiner required the election of a single group of claims selected from Group I (claims 1-3 and 9), Group II (claims 4-6), and Group III (claims 7 and 8). Applicants elected to prosecute the claims of Group II, *i.e.* claims 4-6. In the Second Preliminary Amendment mailed June 6, 2007, Applicants also added new claims 10-14, which are directed to the elected invention.

In the Office Action mailed March 13, 2008, the Examiner has further required the election of a single species selected from i-xxxi. Applicants elect with traverse to prosecute species iv, *i.e.* the interaction with amino acid residue 799. Claims 4, 6, and 10 read on the elected species. Applicants traverse the

requirement for a species election on the grounds that the named species do not lack unity of invention. According to *MPEP* § 1893.03(d), "[a] group of inventions is considered linked to form a single general inventive concept where there is a technical relationship among the inventions that involves at least one common or corresponding special technical feature." In the present case, there is a technical relationship between species i-xxxi because they are all potential sites of interaction between the ErbB4 kinase domain and a compound that is a potential inhibitor. Accordingly, these species are linked to form a general inventive concept and should be examined together.

Should the examiner maintain the requirement for the election of a single species, Applicants note that *MPEP 1893.03(d)* states that "[i]f an examiner (1) determines that the claims lack unity of invention and (2) requires election of a single invention, when all of the claims drawn to the elected invention are allowable (i.e., meet the requirements of 35 U.S.C. 101, 102, 103 and 112), the nonelected invention(s) should be considered for rejoinder." Accordingly, at such time as the elected species is determined to be allowable, Applicants will request rejoinder of the remaining species.

Applicants believe that no fees are due in connection with the filing of this paper other than those specifically authorized herewith. However, should any other fees be deemed necessary to effect the timely filing of this paper the Commissioner is hereby authorized to charge such fees to Deposit Account No. 07-1392.

Respectfully submitted,
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